BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

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| Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies. | )<br>)<br>)<br>)<br>) | R.06-04-009<br>(Filed April 13, 2006) |

# REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON THE FINAL STAFF WORKSHOP REPORT AND PROPOSAL FOR AN INTERIM EMISSIONS PERFORMANCE STANDARD PROGRAM FRAMEWORK

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Dated: **October 27, 2006**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE**

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# REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON THE FINAL STAFF WORKSHOP REPORT AND PROPOSAL FOR AN INTERIM EMISSIONS PERFORMANCE STANDARD PROGRAM FRAMEWORK

## I.

## INTRODUCTION

Pursuant to the Assigned Commissioner's Ruling: Phase 1 Amended Scoping Memo and Request for Comments on Final Staff Recommendations[1] and Direction for Reply Comments in R.06-04-009 from Administrative Law Judge (ALJ) Meg Gottstein,[2] Southern California Edison Company (SCE) hereby submits its Reply Comments on the Final Staff Workshop Report and Proposal for an Interim EPS (Final Staff Proposal), contained in the Final Workshop Report: Interim Emissions Performance Standard Program Framework (Final Report).[3]

The California Public Utilities Commission (CPUC) is considering this Final Report regarding a Greenhouse Gas Emission Performance Standard (GHG EPS). Much of the staff's consideration of this issue took place in workshops that were conducted before the passage of

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[1] Assigned Commissioner's Ruling: Phase 1 Amended Scoping Memo and Request for Comments on Final Staff Recommendations, dated October 5, 2006, *mimeo,* pp. 3, 7.

[2] Email dated October 23, 2006, from Kris L. Keller, on behalf of ALJ Gottstein, to the Service List in R.06-04-009.

[3] Final Workshop Report: Interim Emissions Performance Standard Program Framework, R.06-04-009, June 21-23, 2006, issued by the Commission on October 2, 2006. The Final Staff Proposal appears as Section VI.C of the Final Workshop Report, pp. 43-48.

Senate Bill (SB) 1368. Now that SB 1368 is law, the CPUC must conform to the Legislature's directives in formulating a GHG EPS.

SCE received Opening Comments from 34 parties.[4] In these Reply Comments, SCE responds to certain issues addressed by various parties in their Opening Comments that do not comport with SB 1368 and to questions raised by ALJ Gottstein in her email dated October 23, 2006. The following is a summary of SCE's main points:

- The Commission should reject the proposal of the Energy Producers and Users Coalition/Cogeneration Association of California (EPUC/CAC) to exempt bottoming-cycle cogeneration technology from the GHG EPS.
- The Commission should not adopt the EPUC/CAC proposed definition for the term "annualized."
- The Commission should reject the recommendations of the Natural Resources Defense Council, the Utility Reform Network, the Union of Concerned Scientists, and the Western Resource Advocates (NRDC et al.), to make utility retained generation undergoing renovations subject to the EPS.
- The 5-year rule referred to in the definition of "long-term financial commitment" in SB 1368 applies only to power purchase contracts and not to "new ownership investment."
- The Commission should reject the proposal of NRDC et al. to assign an arbitrary high emission rate for unspecified resource contracts.

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[4] Calpine Corporation, Carson Hydrogen Power Project, California Cogeneration Council, Center for Energy and Economic Development, California Municipal Utilities Association, Northern California Power Agency, Southern California Public Power Authority, Constellation Newenergy, Inc., Constellation Energy Commodities Group, Inc., Constellation Generation Group, LLC, NRG Energy, Inc., Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Alliance for Retail Energy Markets, Division of Ratepayer Advocates, Energy Producers and Users Coalition, Cogeneration Association of California, Greenhouse Power Institute, Independent Energy Producers Association, LS Power Generation, LLC, Natural Resources Defense Council, The Utility Reform Network, Union of Concerned Scientists, Western Resource Advocates, Pacific Gas and Electric Company, Plumas-Sierra Rural Electric Cooperative, Anza Electric Cooperative, Surprise Valley Electrification Corporation, Sacramento Municipal Utility District, San Diego Gas and Electric Company, Southern California Gas Company, San Francisco Community Power Cooperative, and Sierra Pacific Power Company.

- The Commission should ignore the opposition of NRDC et al. and the Independent Energy Producers Association (IEPA) to research and development (R&D) exemptions.
- The Commission should reject the recommendations of Constellation Energy Commodities Group, Inc., Constellation Generation Group, LLC, NRG Energy, Inc., Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Alliance for Retail Energy Markets (Constellation et al.), not to distinguish between contracts of Load Serving Entities (LSEs) subject to the EPS based on ownership of the generation facility.
- The Commission should ignore the complaint of Constellation et al., that Investor-Owned Utility (IOU) generation will have a competitive advantage under the EPS.
- The Commission should not implement a size threshold (less than 5 MW) as proposed by NRDC et al.

## II.
## DISCUSSION

### A. The Commission Should Reject the Proposal of EPUC/CAC to Exempt Bottoming-Cycle Cogeneration Technology from the GHG EPS.

In its opening comments, EPUC/CAC argue that the EPS cannot reasonably be applied to bottoming-cycle cogeneration technology. They specifically request the Commission clarify that bottoming-cycle cogeneration technology not be included within the definition of "powerplants" under SB 1368.[5] EPUC/CAC assert that for cogeneration, only electricity net of on-site use should be considered for purposes of the EPS screen.[6]

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[5] Opening Comments of EPUC/CAC, pp. 7-8, and 9.
[6] Opening Comments of EPUC/CAC, pp. 5-7.

EPUC/CAC propose an exception for bottoming-cycle cogeneration: the entire emissions output of such facilities should be exempt from EPS, regardless of whether the electrical output is used for on-site needs or is exported to the grid through a power purchase agreement with an LSE. The sole basis for EPUC/CAC's assertion is that no emissions are associated with the generation of electricity using a bottoming cycle technology. According to EPUC/CAC, all of the emissions are associated with the industrial process. However, EPUC/CAC provide no evidence for its assertion. More importantly, the assertion is incorrect and the Commission should reject it. According to California Public Utilities Code (PUC) Section 8340(m), which SB 1368 establishes:

> "Powerplant" means a facility for the generation of electricity, and includes one or more generating units at the same location.

Under PUC Section 8340(m), bottoming-cycle cogeneration technology is a powerplant subject to SB 1368. Bottoming-cycle technology uses waste heat to generate electricity. To the extent that an entity exports electricity to the grid, the emissions associated with the production of the electricity are subject to the EPS. All such facilities, regardless of whether they utilize supplemental firing for increased production, emit some amount of greenhouse gases. In addition, SB 1368 does not distinguish between emissions from topping-cycle and emissions from bottoming-cycle cogeneration facilities.

The emissions rate from any topping-cycle or bottoming-cycle cogeneration facility that delivers electrical output to an LSE should be determined by summing all greenhouse gases and apportioning such gases by the ratio of energy delivered to the LSE divided by the sum of (i) the entire net generation exported to the LSE and consumed by the host customer and (ii) the discounted useful thermal output. Moreover, it should be recognized that the EPS is an interim regulation. After regulations on total plant emissions are adopted pursuant to AB 32, the EPUC/CAC position might make some sense because the total GHG emissions from the facility would be subject to regulation. However, at this stage of GHG emissions control, SB 1368 requires that all cogeneration facility GHG emissions be subject to the EPS.

The Commission should reject the proposal of EPUC/CAC to ignore the emissions from bottoming-cycle cogeneration because it is arbitrarily selective and inconsistent with the objectives of SB 1368.

## B. <u>The Commission Should Not Adopt the Proposed Definition of EPUC/CAC for the Term "Annualized."</u>

In its Opening Comments, CAC/EPUC recommends "clarifying" the Final Report to provide that average annual capacity factor required by the statute be calculated by summing the total annual energy deliveries of a resource, averaging them over the year, and then dividing that average by the plant's maximum permitted capacity.[7] SB 1368 provides no basis for using the "maximum permitted" capacity in the denominator of this calculation. Moreover, doing so will systematically tend to decrease the capacity factor used to determine EPS compliance, a result that would be inconsistent with the overall intent of the legislation. Whenever an entire resource is under contract to a LSE, the contractual capacity should be used in the denominator of the capacity factor calculation. This would be more consistent with the policy direction of the Legislature. Because the EPS is intended to screen contracts, and the contract capacity represents the amount of output for which the buyer and seller have entered into a long-term commitment, contract capacity is a better indicator of the likely actual output of the facility over time.

The Commission should define the manner by which to calculate the capacity factor for the purpose of determining whether a new ownership investment or a new or renewed contract is for baseload generation. In addition, the Commission should define the manner by which to calculate the carbon intensity of a resource or contractual commitment in order to compare it to the gateway EPS threshold. Before doing so, however, SCE recommends that the Commission hold a technical workshop to discuss such definitional issues.

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[7] Opening Comments of EPUC/CAC, p. 11.

## C. **The Commission Should Reject The Recommendations of NRDC et al., to Make Utility Retained Generation (URG) Undergoing Renovations Subject to the EPS.**

The Final Report and Final Staff Proposal depart from the intent of SB 1368 regarding restoration. Although NRDC et al. believe that the Final Report is largely consistent with SB 1368, they go further and propose additional critical modifications that they claim are necessary to make the EPS consistent with SB 1368 and to accomplish the Commission's goals.[8] NRDC et al. strongly support the staff recommendation that URG that undergoes major renovations be subject to the EPS.[9] There is no statutory support for this recommendation. SB 1368 does not apply to URG if there is no change in ownership. NRDC et al. wrongly assert (with no legislative support) that renovations that extend a plant's life by five or more years are subject to the EPS. NRDC et al. also wrongly support Staff's recommendation that major renovations need not expand the rated capacity of the plant in order to subject the facility to the EPS.

These interpretations are inconsistent with the intent and plain meaning of SB 1368. PUC Section 8340(j) clearly provides that the EPS shall apply only to a ***new ownership*** investment. In other words, ***existing*** ownership investments are not subject to the EPS. Under the interpretations proffered by Staff and NRDC et al., the EPS would be applied to investments in existing facilities, even if there were no change in ownership. This contravenes the intent and plain meaning of this provision, which uses the word "new" to modify the words "ownership investment."[10] If an entity has an existing ownership interest and it renovates its facility, it would not be subject to the EPS. This would be true even if the investment extends the life of the facility or increases the rated capacity of the plant.

SB 1368 does not subject expenditures for maintenance, overhaul, or renovations to the EPS. Such expenditures are both not subject to the EPS screen and are consistent with the

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[8] Opening Comments of NRDC et al., p. 4.
[9] Opening Comments of NRDC et al., pp. 5 and 11.
[10] See Opening Comments of SCE, pp. 2-6.

requirement to consider system reliability and cost of power to ratepayers. The Legislature, in passing SB 1368, had an overarching goal to implement the GHG EPS for the ultimate benefit of California's electricity customers and to do them no harm. SB 1368 adds new PUC Section 8341(d)(6), which provides:

> In adopting and implementing the greenhouse gases emission performance standard, the commission, in consultation with the Independent System Operator shall consider the effects of the standard on <u>system reliability and overall costs to electricity customers</u>.

This provision provides that, when making the rules to adopt and implement the new GHG EPS, the Commission must consider the effects on the "system reliability" and the "overall costs" to California's electricity customers. This clearly supports expenditures such as maintenance, overhauls, and renovations of existing powerplants, because such expenditures are needed to insure system reliability and to reduce overall costs to electricity customers. To prohibit renovations by making them pass through the gateway and satisfy the EPS would effectively shut down existing powerplants that require renovations to keep them operational.

The Commission should reject this recommendation of Staff and NRDC et al. to subject URG that undergoes major renovations to the EPS, since SB 1368 does not support this onerous interpretation. The overall purpose of the legislation is to prevent the financing of construction of new pulverized coal-fired generation by California ratepayers, not to shut down existing generation facilities because the plant owners are barred from performing proper maintenance, overhauls, and renovations. In fact, doing so would contravene the policies underlying SB 1368. If existing generation is effectively shut down because of the EPS rules, system reliability will suffer and customer costs will escalate.

## D. <u>The 5-Year Rule Referred to in the Definition of "Long-Term Financial Commitment" in SB 1368 Applies Only to Power Purchase Contracts and Not to "New Ownership Investment."</u>

In her email dated October 23, 2006, ALJ Gottstein referenced a dispute among several parties about whether "repowering" or "major renovations" might trigger applications of the EPS under the "new ownership investment" provision of SB 1368. She then asked parties to opine whether the following proposed definition would be appropriate for this purpose, if the Commission rules affirmatively that they do apply to URG:

> <u>Any investment</u> that is <u>intended to extend the life</u> of one or more units of an <u>existing baseload powerplant</u> for <u>five years or more</u>, or results in a net increase in rated capacity of that powerplant. "Rated capacity" refers to the nameplate capacity of the plant, i.e., the plant's maximum rated output under specific conditions designated by the manufacturer and usually indicated in a nameplate physically attached to the generator.[11]

ALJ Gottstein's proposed new rule presumes that "any investment" would trigger the SB1368 EPS if it extended the life of a powerplant for five or more years or increased its capacity. This interpretation is incorrect under any fair reading of the statute. Moreover, the formulation of the issue presumes that renovations are contrary to California's policies, including the policies underlying SB 1368. The Commission should reject this interpretation.

As more fully explained in SCE's Opening Comments, the Legislative history shows that SB 1368 does not apply to investments that are made in existing facilities where the ownership of the facility has not changed.[12] The original version of SB 1368 included the phrase, "an ownership investment." Thus, the original version of the bill would have subjected all ownership investments in power plants to the definition of "long-term financial commitments." However, that language was changed during negotiations on the bill. The bill was amended to change the

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[11] Email dated October 23, 2006, from ALJ Gottstein to Service List of R.06-04-009.
[12] Opening Comments of SCE, pp. 2-6.

phrase “an ownership investment” to “a ***new ownership*** investment” in the definition of long-term financial commitment. This amendment modified the type of ownership investment that would constitute a “long-term financial commitment” — only a “***new ownership*** investment in baseload generation” would now qualify. The addition of the word “new” differentiates “***new ownership*** investments” from ***existing “ownership*** investments.” If the Legislature wanted to subject all ownership investments to the EPS, it would not have added the modifying adjective “new” before the term “ownership investment.”

PUC Section 8340(j) provides the definition of long-term financial commitment as used in various provisions of SB 1368:

> “Long-term financial commitment” means either a ***new ownership investment*** in baseload generation or a new or renewed ***contract with a term of five or more years***, which includes procurement of baseload generation. Emphasis added.

The definition includes two distinct alternatives:

- A new ownership investment in baseload generation, or
- A new or renewed contract with a term of five or more years, which includes procurement of baseload generation.

Staff, NRDC et al., and now the assigned ALJ further misconstrue the statute and the Legislature’s intent by linking the five-year clause to new ownership investments in a baseload generating facility. The five-year term applies only to power purchase contracts. The purpose of subjecting long-term contracts to the EPS is to ensure that new contracts are not used to support investments in new conventional coal-fired generation facilities. The Legislature clearly understood that financial institutions would not finance investments in new facilities without contracts to sell the output for the duration of the investment. Those contracts generally must be ten years or more to justify the amortization of the financial commitment. The phrase “with a term of five or more years” does not enter into the consideration of “new ownership investment in baseload generation.” Using any period for ownership investments would be nonsensical, since ownership (whether new or existing) does not have a term of years; ownership continues until the owner sells that interest.

Thus, ALJ Gottstein's proposed provision, which includes a five-year limit on capital investments in existing facilities and/or increases in the net capacity are factually incorrect and illogical under SB 1368. This standard would effectively trigger an EPS review of URG for ***any*** investment that extends the life of a plant five years or more. This was not the intent of the Legislature and nowhere in the statute is this intent expressed.

## E. The Commission Should Reject the Proposal of NRDC et al. to Assign an Arbitrary High Emission Rate for Unspecified Resource Contracts.

NRDC et al. states:

> We strongly recommend that the Commission clarify the calculation of and specify a numerical value for the imputed emissions rate for unspecified power. We are willing to support using the CEC Net System Power emissions rates for this purpose, as long as the highest emissions rate is used for each fuel type.[13]

NRDC et al. recognize that the assignment is a "somewhat arbitrary process, and will never truly represent the emissions of the actual underlying resources" and that there are "inherent limitations" to the exercise.[14] However, NRDC et al. still support the staff recommendation to use the California Energy Commission (CEC) Net System Power (NSP) with the proposal that the highest emissions rate for each fuel type be used to calculate the overall weighted average emissions rate.[15]

This methodology is inherently flawed. The application of the highest emission rate for each fuel type adds another onerous component on top of the already onerous proposal to use the CEC NSP. It will preclude all unspecified resource contracts, which the California Independent

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[13] Opening Comments of NRDC et al., p. 24-25.
[14] Opening Comments of NRDC et al., p. 24.
[15] Opening Comments of NRDC et al., p. 25.

System Operator (CAISO) must have available for system reliability. This would contravene PUC Section 8341(d)(6), which provides:

> In adopting and implementing the greenhouse gases emission performance standard, the commission, in consultation with the Independent System Operator shall consider the effects of the standard on <u>system reliability and overall costs to electricity customers</u>.

This provision clearly states that, when making the rules to adopt and implement the new GHG EPS, the Commission must consider the effects on the "system reliability" and the "overall costs" to California's electricity customers. Imputing a high emissions rate to unspecified contracts could adversely affect system reliability by eliminating options currently available to the CAISO and can ultimately increase overall costs to electricity customers as more expensive resources must be used to compensate for the eliminated unspecified resources.

SCE's approach, as explained in its Opening Comments, would maintain the availability of unspecified resources to the CAISO and avoid increased costs. The solution is to permit an LSE to enter into a contract with a supplier with unspecified resources/facilities, and to provide documentation that shows the average emissions factor of that group of resources/facilities is lower than a reasonably set EPS applied to unspecified resource contracts.[16] If a system purchase is made, the EPS should be based on the emissions of the system from which the purchase is being made, not the CEC NSP. Alternatively, as proposed in SCE's Opening Comments, the Commission should adopt as the emissions factor for unspecific resources, the default factor used by the California Climate Action Registry for calculating GHG emissions from the use of electricity. The Commission must insure that the metrics used for unspecified resource contracts be fair and not an arbitrary proxy that can vary widely from year to year.

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[16] Opening Comments of SCE, pp. 10-11.

## F. The Commission Should Ignore the Opposition of NRDC et al. and the IEPA to R&D Exemptions.

Both NRDC et al. and IEP strongly oppose the staff's proposed R&D Exemption. NRDC et al. states:

> We strongly oppose any R&D exemption. If the Commission decides to allow for a case-by-case R&D exemption, we strongly urge the Commission to ensure that enough $CO_2$ will be captured to meet the standard over the lifetime of the commitment.[17]

In addition, IEP states:

> IEP disagrees with the Report's recommendation regarding a potential R&D exemption. The Report's proposed R&D exemption has no basis in the language of SB 1368 and should therefore be rejected by the Commission for the same reasons cited in IEP's comments on the size threshold, above.[18]

Although SB 1368 does not explicitly address R&D exemptions, support for such exemptions can be found in the findings and declarations of the Legislature as identified in Section 1 of the statute:

> The people of the State of California do enact as follows:
> SECTION 1. The Legislature finds and declares all of the following:
> (d) To the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, <u>the Energy Action Plan II [EAP II] establishes a policy that the state will rely on clean and efficient fossil fuel fired generation and will "encourage the development of cost-effective, highly-efficient, and environmentally-sound supply resources to provide reliability and consistency with the state's energy priorities</u>."
> Emphasis added.

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[17] Opening Comments of NRDC et al., pp. 21-22.
[18] Opening Comments of IEP, p. 7.

The Legislature has expressed its support for the policy of the EAP II to rely on clean and efficient fossil fuel fired generation and to encourage the development of cost-effective, highly efficient, and environmentally sound supply resources. To implement this policy, the state needs to foster and encourage R&D efforts to develop such supply resources. In interpreting a statute, one not only looks to the specific words used, but also to the legislative intent as expressed in other passages of the statute. This passage reveals the legislative intent to support R&D activities. In the context of SB 1368, R&D activity to reduce or eliminate GHG emissions from use of high carbon content fuels for electric generation can only occur with an R&D exemption.

Moreover, the NRDC et al. proposal conflicts with the basic purposes of the state's GHG policy. The overarching goal is to reduce GHG emissions. This goal can only be satisfied if new technologies are developed that are designed to reduce GHG. The NRDC et al. proposal blocks progress toward the state's goal. The Commission should encourage R&D activities – not discourage them. The objective of an R&D project is to test the technology. It would be virtually impossible, prior to conducting the demonstration, to prove the technology was compliant. SCE urges the Commission to ignore this impossible and ill-conceived recommendation.

## G. The Commission Should Reject The Recommendations of Constellation et al., Not To Distinguish Between Contracts of LSEs Subject to the EPS Based on Ownership of the Generation Facility.

Constellation et al. complain that existing generation facilities not owned by IOUs are subject to the gateway screen ***any time*** the non-IOU owner executes a contract with a jurisdictional LSE, whether or not any major renovations are contemplated with respect to that contract at the generation facility.[19] Constellation et al. recommend that the Commission eliminate this perceived disparity and create uniformity in application of the EPS to further

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[19] Opening Comments of Constellation et al., p. 2.

SB 1368 policy.[20] Constellation et al. propose that the EPS not distinguish LSEs' procurement contracts subject to the EPS based only on the nature of the ownership interests.

Constellation et al. argue that IOU-owned assets that are committed to serve IOU load, including assets with technologies similar to those technologies used by non-IOU LSEs, would only be subject to the gateway screen when the IOU seeks to make major renovations at the facility.[21] They argue that, since an IOU does not contract for energy or capacity from its own assets, it would never be subject to the EPS under the "new or renewed contract" part of the definition of "long-term financial commitment.

Constellation et al. conclude that such disparate treatment of similar technologies, based solely on ownership of the generation facility, creates an unfair competitive advantage for IOU-owned generation that is not consistent with the goals of SB 1368, is contrary to sound public policy, and should be rejected.[22] Constellation et al. urges the Commission to change the manner in which it will implement the EPS in a way that they claim would not conflict with PUC Sections 8340(j) and 8341(a), added by SB 1368.

Constellation et al. are wrong. IOUs can and do enter into contracts of five or more years with non-IOUs who sell energy and capacity. IOUs can be subject to both prongs of the definition of "long term financial commitment" – not just the first prong as Constellation et al. suggests. Moreover, the ***only*** time existing generation facilities not owned by IOUs would be subject to the gateway screen is when the owner executes a contract with a jurisdictional LSE with a term of five or more years. The owners of these non-IOU facilities can enter into contracts of less than five years and avoid the gateway.

The definition of "long-term financial commitment" is set in the statute. In passing SB 1368, the Legislature intended to subject only "long-term financial commitments" to the

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20 Opening Comments of Constellation et al., p. 2.
21 Opening Comments of Constellation et al., p. 2.
22 Opening Comments of Constellation et al., p. 2.

EPS. The Commission cannot change its language or intent. The Commission must reject this request of Constellation et al. as contrary to law.

## H. The Commission Should Ignore The Complaint of Constellation et al. that IOU-Owned Generation Will Have an Unfair Competitive Advantage Under the EPS.

Constellation et al. complain about the "credibility of the proposed EPS" because it allegedly will "create an increasingly unfair competitive advantage for the IOU-owned generation.[23] Constellation et al. further complain:

> "In addition to the fact that the disparate treatment for IOU-owned generation and non-IOU owned generation violates the goals of SB 1368 as described above, allowing such a disparity in the application of the EPS creates just the type of regulatory and market uncertainty that the Commission traditionally strives to avoid.[24]

Constellation et al. blame the Final Report for the uncertainty and for providing a "categorical exemption" for all IOU-owned generation from the "new and existing" mandate applied to all non-IOU-owned generation.[25] Constellation et al. ignore the fact that SB 1368 applies the distinctions between "new ownership investment" and existing ownership investment in its definition of "long-term financial commitment." The Staff must follow SB 1368 in developing the Final Report.

## I. The Commission Should Not Implement a Size Threshold (Less Than 5 MW) As Proposed by NRDC et al.

NRDC et al. propose that the Commission implement a size threshold of 5 MW:

> Therefore, we do not support a 25 MW threshold and continue to recommend a size threshold for underlying facilities of 5 MW (the maximum size

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[23] Opening Comments of Constellation et al., p. 9.
[24] Opening Comments of Constellation et al., p. 8.
[25] Opening Comments of Constellation et al., p. 8.

> limit under the Self Generation Incentive Program) to help simplify implementation of the standard by eliminating from consideration the truly small resources. In addition, a size threshold should not be applied to any *contracts,* specified or unspecified.[26]

SCE originally supported the exemption for specified resources (built or under contract) and unspecified resources/facilities under contract of 25 MW or less. However, SCE recognizes that SB 1368 does not provide any exemption based on a size threshold. Therefore, consistent with the Legislature's intent, the Commission should not adopt a size threshold. Such an exemption would allow small LSEs to "game the system" by signing small contracts that do not have to pass the EPS threshold and also by releasing their customers back to the IOU when markets are unfavorable. This would be a "lose-lose" situation for the IOUs and, more importantly, would frustrate achieving the environmental goals of SB 1368. The Commission should prevent such risks by declining to set a small-LSE exemption as proposed by NRDC et al.

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[26] Opening Comments of NRDC et al., pp. 14-15. Emphasis in original.

## III.

## CONCLUSION

SCE respectfully submits its Reply Comments on various parties Opening Comments on the Final Workshop Report.

Respectfully submitted,

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October 27, 2006

# CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commissioner's Rules of Practice and Procedure, I have this day served a true copy of REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON THE FINAL STAFF WORKSHOP REPORT AND PROPOSAL FOR AN INTERIM EMISSIONS PERFORMANCE STANDARD PROGRAM FRAMEWORK on all parties identified in the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **27th day of October, 2006**, at Rosemead, California.

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